

BASIL R. TWIST

IBLA 75-99

Decided February 26, 1975

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring high bidder on Parcel No. 1 of Public Sale N-5908.

Affirmed.

1. Federal Employees and Officers: Authority to Bind Government--Public Sales: Preference Rights--Public Sales: Sales under Special Statutes

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

APPEARANCES: Basil R. Twist, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On September 27, 1971, Basil R. Twist (appellant) made application for public sale under the Act of September 26, 1968, 43 U.S.C. §§ 1431-35 (1970), which provided for the classification and sale of public domain lands subject to unintentional trespass, and the applicable regulations, 43 CFR Part 2710. Appellant's application 1/ for public sale of the land in T. 14 N., R. 43 E., M.D.M., was accompanied by a petition for classification under 43 CFR Part 2410.

1/ The application was filed in the Battle Mountain District Office on September 23, 1971, from where it was transmitted to the State Office and stamped September 27, 1971. As September 26, 1971, the expiration date of the statutory authority (43 U.S.C. § 1435 (1970)), was a Sunday, the application was timely filed under 43 CFR 1821.2-2(e).

After a Geological Survey mineral report and field examination were made, and an appraisal was requested, the Battle Mountain District Manager, Bureau of Land Management (BLM), classified the lands for sale under the Act on June 2, 1972. Then, after a land report, environmental analysis, appraisal and publication, the BLM held the sale auction on May 22, 1974. Towner Manufacturing Company's bid for both parcels was rejected for failure to identify the bidder properly and submit the full amount, as required by the notice of sale.

At the second sale, June 5, 1974, appellant bid high on Parcel No. 2 and bid \$1,500, the appraised value, on Parcel No. 1. Joel Rosenthal, Trustee, bid \$1,600 for Parcel No. 1 and was declared high bidder in the notice which also announced the beginning of the 30-day preference right period for owners of contiguous lands under 43 CFR 2711.4(b).

On July 10, 1974, since no preference right had been asserted, the BLM issued its decision declaring Joel Rosenthal, Trustee, the high bidder (purchaser) for Parcel No. 1. Mr. Twist then filed this appeal.

Appellant argues that he was prevented from asserting his preference right during the 30-day period by the fact that the refund of his unsuccessful bid was not sent until after the 30-day period had expired. He asserts that he relied on assurances from BLM employees that the bid would be refunded during the 30-day preference right period. He requests that the decision be set aside and that he be allowed to submit a corrected bid.

The notice "High Bidders Declared" did advise appellant that his lower bid "has been returned" to him, and appellant has submitted a copy of the check from the Treasury returning his bid, which is dated July 24, 1974, 18 days after the close of the 30-day period for asserting preference rights. However, we do not agree with appellant that these facts sustain the appeal.

[1] The long-standing rule of the Department is that a preference right to purchase is lost by failure to comply timely with the public sale regulations. Gene Van Matre, 6 IBLA 229, 231 (1972), and cases cited therein. The requirement in 43 CFR 2711.4(b)(1) that the purchase money be submitted within the 30-day period is clear and unequivocal, see Martin H. Schuler, 67 I.D. 261, 264 (1960), and inquiry of the land office regarding payment does not obviate compliance. Elias W. Leigh, A-28681 (September 12, 1961). Appellant submitted nothing within the 30-day period.

Appellant's asserted reliance on his expected refund does not compel a contrary result. Reliance upon information given by federal employees "cannot operate to vest any right not authorized by law,"

43 CFR 1810.3(c), nor can delay in the performance of official duty divest the Government of authority to enforce the regulations. 43 CFR 1810.3(a). 2/ Appellant was not misled regarding what he had to do to assert his preference right properly. As appellant failed to assert his preference right to Parcel No. 1, it was properly awarded to Joel Rosenthal, Trustee.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the case is remanded to the BLM for further appropriate action.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

2/ The facts of this case do not establish reasonable reliance; much less do they invoke the narrow exception to the rule set out in 43 CFR 1810.3 that estoppel will not lie against the Government. See United States v. Lazy FC Ranch, 481 F.2d 985, 989 (9th Cir. 1973).

